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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,798	04/25/2005	Takehiko Kishikawa	2005_0600A	5653

513 7590 01/16/2007  
WENDEROTH, LIND & PONACK, L.L.P.  
2033 K STREET N. W.  
SUITE 800  
WASHINGTON, DC 20006-1021

EXAMINER
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COURSON, TANIA C

ART UNIT	PAPER NUMBER
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2859

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/532,798

**Applicant(s)**

KISHIKAWA, TAKEHIKO

**Examiner**

Tania C. Courson

**Art Unit**

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olejniczak (US 2,542,561) in view of Busby (US 1,751,393).

Olejniczak discloses a level instrument including of the following:

- a) a main body frame (3) that is to be arranged along a vertical face to be measured (column 13, lines 10-13), the main body frame having a first end and a second end (Fig. 1); and a reference arm (13,19) connected to the first end of the main body frame so as to be perpendicular relative to the main body frame (Fig. 1); and a telescoping arm (14, 28) connected to the second end of the main body frame so as to be perpendicular relative to the main body frame (Fig. 1), wherein the reference arm and the telescoping arm extend in the same direction from the main body frame and are adapted to contact the face to be measured (Fig. 1), and wherein the said telescoping arm has a scale (12) and a bubble gauge (31) for determining a level of the telescoping arm (Fig. 1), wherein during an inclination measurement, the telescoping arm is adjusted so that the telescoping arm is level as indicated by the bubble gauge (Fig. 1);

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- b) wherein said the bubble gauge determines a level of the telescoping arm in a telescoping direction (Fig. 1);
- c) wherein the said bubble gauge determines a level of the telescoping arm in a direction perpendicular to a telescoping direction (Fig. 1);
- d) wherein the said bubble gauge determines a level of the telescoping arm in a direction perpendicular to a telescoping direction (Fig. 1);
- e) wherein the said bubble gauge can be observed from both upper and under sides of the telescoping arm (Fig. 1);
- f) further comprising a driving mechanism (29) that drives a telescoping operation of the telescoping arm (Fig. 1);
- g) wherein the said driving mechanism converts a rotary movement of a rotating member into a telescoping movement of the telescoping arm (Fig. 1);
- h) wherein the said reference arm is provided with a protrusion (36) on a portion to be in contact with the face to be measured on an outer side of the main body frame (Fig. 1);
- i) wherein the said main body frame is provided with a bubble gauge (21) for determining a level of the main body frame (Fig. 1);
- j) wherein when the telescoping arm becomes level as indicated by the bubble gauge, the inclination of the face to be measured is indicated by the slide scale (12) on the telescoping arm (Fig. 1).

Olejniczak does not disclose a slide scale that is movable by telescoping a telescoping arm.

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Busby teaches a level gauge that includes a slide scale (19) that is movable by telescoping a telescoping arm (Fig.3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the level instrument of Olejniczak, so as to include a slide scale that is movable by telescoping a telescoping arm, as taught by Busby, so as to provide additional measurement accuracy during measurement of a surface.

### *Response to Arguments*

3. Applicant's arguments filed on September 29, 2006 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose a measurement device:

Armstrong (US 4,939,848)

Hoffman et al. (US 4,413,420)

Pavitt (US 4,271,599)

Weiss (US 3,190,008)

Posthauer, Sr. (US 2,743,528)

Kleineschay (US 2,154,625)

Shaw et al. (US 1,719,812)

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5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239. The examiner can normally be reached on Monday, Wednesday and Thursday from 10AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.

The fax number for this Organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Diego Gutierrez**  
**Supervisory Patent Examiner**  
**Technology Center 2800**

TCC  
January 4, 2007